



MEDICAID ASSET PROTECTION TRUSTS

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How can I pay for my long term care costs?

Long Term Care Insurance

- Can be costly to purchase/premium increases.
- You may not qualify medically.
- Your coverage may not be sufficient (daily benefit and/or lifetime coverage).

Private Pay

- Use your own assets and income.
- Average nursing home costs are about \$120,000 to \$180,000 a year currently (or \$11,000 to \$16,000 a month).

Medicaid

- Must be at or below certain resource and income levels in order to qualify.
- If looking for nursing home care, there is a 5 year look back period and sanctions can apply for transfers of assets for less than fair market value (gifts) within that timeframe.

Medicaid Resource Allowances for nursing home and community Medicaid waiver programs

Married Couples

- ▶ Community spouse can keep \$74,820 up to \$130,380 in assets.
- ▶ Institutionalized spouse can keep \$15,900 in assets.
- ▶ Primary residence is exempt (up to \$906,000 in value).
- ▶ Retirement accounts of **any value** that are in “pay out” status are exempt.
- ▶ One vehicle of any value is exempt.
- ▶ Combined Life insurance with a face value of \$1,500 or less per person is exempt and term life insurance is exempt.
- ▶ Pre-paid irrevocable burial accounts are exempt.

Single individuals

- ▶ Medicaid applicant can keep \$15,900 in assets.
- ▶ Retirement accounts that are in “payout status” are exempt.
- ▶ Combined Life insurance with a face value of \$1,500 or less is exempt as well as term insurance.
- ▶ Primary residence is exempt if the applicant is living in it (for waiver programs only).
- ▶ One vehicle is exempt (for waiver programs or if medically necessary to transport applicant to doctor’s appointments if in a nursing home).
- ▶ Pre-paid irrevocable burial accounts are exempt.

How to protect assets from exposure to long term care cost?

- ▶ If you have excess resources that are exposed to long term care costs and you don't have long term care insurance consider a Medicaid Asset Protection (MAP) trust.
- ▶ A MAP trust can protect assets from long term care costs at home or in a nursing home as funding the trust starts a five-year clock "ticking" for skilled nursing home Medicaid eligibility purposes. Funding the trust with excess resources makes you eligible the following month for some community Medicaid waiver programs that can provide care for you at home, assuming the assets that remain in your name are below the Medicaid resource allowances previously discussed. Currently, there is no lookback period for these community Medicaid waiver programs so there are no sanctions for transfers or gifts made prior to applying for same. A 30 month look back period is being implemented for any transfer made on or after 10/1/2020 on 1/1/2022 for some of these community Medicaid waiver programs (like the Managed Long Term Care program and Assisted living program).

MAP Trust- Who are the players?

Grantors

- The individual/individuals who sets up the trust and whose money or property is initially put into the trust to fund it.
- Any individual over age 18 can establish an irrevocable trust.
- There is no disability requirement for an individual to set up an irrevocable trust as there is with a pooled supplemental needs trust.

Trustees

The individual/individuals or entity that is legally responsible for investing the money and property held in the trust. The Trustee is a fiduciary who is responsible for paying the income and principal to the beneficiaries of the trust in accordance with what the terms of the trust provide.

Beneficiaries

The individual/individuals or entities that receive income and/or principal from the trust during the Grantor's lifetime and/or at his or her death.

MAP Trust- How does it Work?

During the Grantor's lifetime

- ▶ Income on the trust investments can be paid to the Grantor or accumulated as part of the trust principal.
- ▶ Principal can be paid to third party beneficiaries like children and/or grandchildren **but not to the Grantor.**
- ▶ Grantor can have life use of house if it is transferred to the trust.

At the Grantor's death

- ▶ Remaining money in the trust will be paid to the Grantor's residuary beneficiaries outright or in further trust (similar to a Will but **no probate is required**).

Funding the Trust

- ▶ How much money should go into the trust?
 - ▶ What are the Grantor's monthly expenses?
 - ▶ What is the Grantor's monthly income?
- ▶ What types of assets can go into the trust?
 - ▶ Almost all kinds of assets (i.e. real property, stocks, bonds, cash, bank accounts, mutual funds, annuities etc.) except retirement accounts.

MAP Trust- If the trust is Irrevocable can I make changes to it once it is set up?

- The Grantor can retain a limited power of appointment to change the beneficiaries.
- The Grantor can retain the power to change Trustees.
- Even though the trust is irrevocable, the Grantor can amend, partially revoke or completely revoke if all interested parties consent per New York Estates Powers Trust Law (EPTL) section 7-1.9

MAP Trust versus outright gifts

Trust

- ▶ Starts the clock “ticking” to protect assets from long term care costs.
- ▶ Protects assets from beneficiary’s creditors.
- ▶ Grantor can change the beneficiaries of the trust are with a limited power of appointment.
- ▶ Grantor can limit distributions to third party beneficiaries to an ascertainable standard (HEMS) or provide for no distributions of principal during his or her lifetime.
- ▶ Grantor can change the trustees.
- ▶ The beneficiaries of the trust receive a step up in cost basis on most of the assets that they receive (except for annuities and US Savings Bonds).
- ▶ Income on trust can be taxed to the grantor at his or her personal rates if it is a grantor trust.
- ▶ More costly option (legal fees) than an outright gift.
- ▶ More complicated to implement and administer than an outright gift.

Outright Gift

- ▶ Starts the clock “ticking to protect assets from long term care costs.
- ▶ The monies are exposed to the beneficiary’s creditors.
- ▶ If the beneficiary dies, these monies could be distributed in accordance with his or her Will or via the intestacy statute, which may not be where the Grantor would have wanted those monies to go in that scenario.
- ▶ The beneficiary can spend the money.
- ▶ The beneficiary takes the assets subject to the Grantor’s cost basis, which could lead to adverse income and capital gains tax consequences.
- ▶ The recipient of the gift pays the income tax on the income generated by the gifted assets (and Donor may have to file a gift tax return with the IRS).
- ▶ Less costly option (less costly than setting up a trust with respect to legal fees).
- ▶ Easier to give an outright gift then to establish, fund and administer a trust.



Pooled Supplemental Needs Trusts

What is a Pooled Supplemental Needs Trust?

- ▶ A type of Supplemental Needs Trust (“SNT”).
- ▶ A tool that can be used to enhance the quality of life for individuals with disabilities. The trust can be used to purchase additional items and services not paid for by government benefits. This trust is intended to supplement and not supplant (or replace) the disabled person’s government benefits.
- ▶ Has multiple beneficiaries who pool their resources together for investment purposes.

What are the Eligibility Requirements to enroll in the pooled trust?

- ▶ The individual must be disabled per Social Security standards and receive Medicaid benefits.
- ▶ If the person is over 65 years of age, a separate determination of disability is required by the Department of Health if the person was not receiving Social Security Disability or Supplemental Security Income benefits prior to age 65.
- ▶ Paperwork to prove disability:
 - ▶ 1 page DOH form that the primary physician must complete and a 5 page Disability Questionnaire that the client or family must complete
 - ▶ This paperwork is to be filed through the local Medicaid office who sends it to the Department of Health in Albany

Why would an individual need a Pooled Trust?

- ▶ Government Benefits have Income/Resources Limits
 - ▶ Medicaid Resource Limit: \$15,900
 - ▶ Medicaid Monthly Income Limit: \$900
 - ▶ Supplemental Security Income (SSI) Resource Limit: \$2,000
- ▶ Remain at home
- ▶ Maintain a better quality of life
 - ▶ Achieve the above without complete loss of resources or income

1st party trust Pooled Supplemental Needs Trust

- ▶ Established by the disabled individual. His or her income and/or assets will be put into the trust.
- ▶ No Transfer penalties for SSI apply if the individual is under age 65.
- ▶ It is unknown if a transfer penalty will apply for community Medicaid waiver programs that will have a 30 month look back beginning January 1, 2022.
- ▶ Transfer penalties will apply for skilled nursing home Medicaid once a person is over 65.
- ▶ Trust ends at disabled beneficiary's death. No disbursements can be made at that time. Any monies remaining in the trust at the death of the disabled beneficiary have to remain in the trust and cannot be paid to the beneficiary's family etc.

What type of money would an individual deposit into the 1st Party trust?

- ▶ Excess Income/Medicaid Spenddown (Any money over the \$900 limit)
- ▶ Direct inheritance
- ▶ Retroactive Social Security Award
- ▶ Personal Injury Settlements
- ▶ Structured Settlement

3rd Party Pooled Supplemental Needs Trust

- ▶ Established by a third party (parent, friend or other family member) of the disabled beneficiary. The third party also contributes his or her money or other assets to the trust for the benefit of the disabled beneficiary.
- ▶ Can be set up during the third party's lifetime or through his or her Will or living trust.
- ▶ 15% of the net income and principal remaining in the Beneficiary's account at death stays with the trust, 85% of the net income and principal remaining in the Beneficiary's account will be distributed by the Trustees to whomever the third party directs.

Eligible Disbursements for non SSI recipients (Medicaid Only)

Generally the trust can
pay living expenses:

- ▶ Rent
- ▶ Mortgage
- ▶ Condo Maintenance
- ▶ Home/Renters insurance
- ▶ Repairs/Maintenance
- ▶ Property taxes
- ▶ Utilities
- ▶ Phone and cable bills
- ▶ Furniture
- ▶ Pre-need funeral arrangements
- ▶ Groceries for beneficiary
- ▶ Car Payments/Insurance
- ▶ Adult diapers
- ▶ Other personal needs
- ▶ Purchases appropriate for beneficiary
- ▶ travel and vacation costs
- ▶ Transportation/Vehicle expenses (owned by beneficiary)

Eligible Disbursements for SSI recipients

- ▶ Vacation
- ▶ Furniture
- ▶ Adaptive Equipment
- ▶ Transportation
- ▶ Computer
- ▶ Gym Membership
- ▶ Education (of beneficiary)
- ▶ Car Payments/Insurance
- ▶ Sporting Goods
- ▶ Pre-need funeral arrangements
- ▶ Non-food/shelter expenses:
 - Telephone/cell phone
 - Cable
 - Internet

Disbursement Requirements

- ▶ All purchases from the trust must receive preapproval (beneficiaries cannot purchase something and expect the Pooled Trust to pay for it)
- ▶ Distribution request forms must be completed and signed (emailed, faxed, mailed, or submitted on the website)
- ▶ Supporting documentation (estimates etc.) must be submitted
- ▶ The Pooled Trust only pays licensed agencies/providers or companies (homecare, professional services, lawn care, snowplowing, etc.)

Prohibited Disbursements

- ▶ Cash to beneficiary or bank accounts
- ▶ Items for others (sole benefit)
- ▶ Capital improvements to property not owned by beneficiary
- ▶ Both rent and mortgage/property taxes, etc.
- ▶ Items covered by government benefits
- ▶ Alcohol, firearms, illegal activity
- ▶ Purchase of a car that is not for the beneficiary

Steps to take to apply for the Pooled Trust

- ▶ Apply for Medicaid.
- ▶ Complete and submit Disability Paperwork, if necessary (over 65 or not receiving SSD or SSI).
- ▶ Complete application and submit with proof of income, spenddown letter from Medicaid, proof of disability, authorized contacts, POA/Guardianship/Court documents, Joinder Agreement (meeting with an attorney), any other required documents
- ▶ Local Pooled Trust is Western NY Coalition Pooled Trust. Website is: wnypooledtrust.org



The Interplay of Medicaid Asset Protection Trusts and Pooled Supplemental Needs Trusts

If a person has established a Medicaid asset protection trust and later applies for a community Medicaid waiver program to obtain home care, he or she was able to (and hopefully will still be able once the new lookback rules are implemented) establish a pooled supplemental needs trust to shelter his or her excess income for Medicaid purposes. As such, in that scenario both trusts can be used in conjunction with each other to protect assets and income from long term care costs.